

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers in whole and in part. W-85538 and W-85014.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas
Leases: Noncompetitive Leases

Pursuant to sec. 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a noncompetitive oil and gas lease offer for such lands must be rejected.

APPEARANCES: George B. McPhillips, Esq., Mineola, New York, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Satellite 8301106 has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 29, 1984, rejecting in part its noncompetitive oil and gas lease offer W-85538, because the lands are within the known geologic structure (KGS) of a producing oil or gas field. Satellite 8303104 has appealed from a decision dated July 2, 1984, rejecting its noncompetitive oil and gas lease offer, W-85014, in its entirety, for the same reason. 1/

Appellants were the first-drawn applicants for parcels WY-227 and WY-298 in the May and March 1983 simultaneous oil and gas lease drawings,

1/ We have consolidated these appeals sua sponte because of the substantial similarity of legal issues involved.

respectively, and were requested to submit executed lease offers, along with payment of the first year's rentals, in two September 1983 BLM decisions. On October 27, 1983, pursuant to the September decisions appellants filed noncompetitive oil and gas lease offers for 982.17 acres of land situated in Converse and Johnson Counties, Wyoming (Satellite 8301106), and 234.76 acres of land situated in Natrona County, Wyoming (Satellite 8303104), pursuant to section 17(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(c) (1982). By memorandum dated April 27, 1984, the District Manager, Casper District, Wyoming, informed the State Director, Wyoming, that certain lands, totaling 400 acres, in lease offer W-85538 were situated within the undefined Taylor KGS, designated effective February 27, 1984, and could not be "clearlisted." Similarly, by memorandum dated June 22, 1984, the District Manager, Casper District, Wyoming, informed the State Director, Wyoming, that all of the lands in lease offer W-85014 were situated within an undefined addition to the Salt Creek KGS, designated effective May 25, 1984. In its May and July 1984 decisions under appeal, BLM rejected appellants' lease offers to the extent that they covered land determined to be within a KGS, which was, thus, unavailable for leasing except by competitive bidding under the regulations at 43 CFR Subpart 3120. A lease was issued effective June 1, 1984, with respect to the remaining lands (not within KGS) in lease offer W-85538.

In their statements of reasons for appeal, appellants do not challenge the determination that the lands are now in a KGS. Rather, they contend that BLM is not entitled to "retroactively" alter the number of acres offered for lease in a simultaneous drawing because, upon submission of an executed lease offer, a "contract" arises between the offeror and BLM, which cannot be unilaterally revised. Appellants argue that BLM's acceptance of the lease offer is a ministerial act. Finally, appellants contend that the BLM decisions constitute an unconstitutional "taking" of property.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3100.3-1. It is well settled that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985), and cases cited therein; 43 CFR 3112.5-2(b). 2/ The Department has no discretion to issue a noncompetitive oil and gas lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983). Similarly, where part of the lands included in a noncompetitive oil and gas lease offer are designated as within a KGS prior to issuance of a lease, the lease offer must be rejected to that extent. Harry S. Hills, 71 IBLA 302 (1983).

2/ 43 CFR 3112.5-2(b) provides that:

"If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field."

Moreover, BLM does not obligate itself to issue a lease merely by soliciting applications in the simultaneous system. As we said in Evelyn D. Ruckstuhl, supra at 72-73: "A drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing. R. K. O'Connell, 85 IBLA 29 (1985); Joseph A. Talladira, [83 IBLA 256 (1984)]; McDade v. Morton, supra at 1010." See also Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969). The signing of an offer by an authorized BLM officer is the act that constitutes acceptance of the offer and creates a binding contract. Harry S. Hills, supra; see 43 CFR 3112.6-1(a) (lease agreement signed by offeror constitutes "offer to lease").

With respect to the constitutional issue raised by appellants, we note that the decisions rejecting appellants' noncompetitive oil and gas lease offers were clearly correct under the existing statutory authority and regulations promulgated pursuant thereto. Inasmuch as appellants had no vested property rights to a lease there can be no unconstitutional taking.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge.

